ISSN 1712-4506 (Online)

Ontario Labour Relations Board HIGHLIGHTS

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May 2014

NOTICES TO THE COMMUNITY

CONSTRUCTION GRIEVANCE FEES

In light of the calling of the provincial election, the date of implementation of the increase in grievance arbitration fees is unknown.

EMAIL NOTIFICATION

Please note that the Board uses ***outgoing e-mail*** to communicate with parties who have provided their e-mail address by sending decisions, notices of hearing, responses to adjournment requests and scheduling-related letters electronically. Unfortunately, the Board ***is not yet able to receive e-mail***. E-mails sent in reply to outgoing communication will not be monitored and will not be answered.

ACCREDITATION

The Board's process for accreditation of construction industry employer organizations will be streamlined, eliminating several Schedules and fine-tuning requirements. Please see the attached Information Bulletin No. 33 and Forms.

JURISDICTIONAL DISPUTES

Please note the new paragraph on page 3 of Information Bulletin No. 25 (highlighted in the attachment).

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in April of this year. These decisions will appear in the March/April issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute www.canlii.org.

Employment Protection for Foreign Nationals – The applicant sought review of an Employment Standards Officer's refusal to issue an order on his behalf – The Director of Employment Standards admitted, and the Board agreed, that the refusal was based on a clerical error and was not a valid reason for the refusal – The recruiter was a dissolved corporation but the *Business Corporations Act* permits the continuation of a proceeding as if the dissolution had not occurred – The Board found that the recruiter had taken money from the foreign national for its services, and ordered that the money be repaid – Application allowed; enforcement remitted to the applicant and the Director of Employment Standards

AMAH INTERNATION INC.; RE: Reynaldo E. Erazo; RE: Director of Employment Standards; OLRB File No. 2583-13-EF; Dated April 30, 2014; Panel: Bernard Fishbein (6 pages)

Employment Standards – Statutory Holiday – F refused to work on his scheduled Sunday hours – The employer permitted this refusal, but did not substitute non-Sunday shift for this loss of work – The Board noted there was no contractual arrangement, verbal or written, making it clear F would not be required to work on Sunday – The Act does not preclude the employer from assigning the complainant work on Sundays, however s. 73(2) does permit an employee to refuse to work on a Sunday –F's position was that

his refusal to work on Sunday was met by a reprisal in that the employer would not substitute his shifts – The Board found that F's earnings were reduced, not because the company punished him for exercising a right under the Act, contrary to section 74, but simply because the cost of exercising that right is one that he bears – Employees may decline to work a Sunday shift, however, they will not be paid for not working, and the Act does not oblige an employer to substitute another shift – F may have had a contractual right to be assigned to a certain number of hours of work per week, but he had no right to any particular schedule of shifts – He exercised his right under the Act to refuse to perform a portion of his shift – The consequence was that he lost pay for one shift per two-week period – The Sunday schedule was not imposed because he exercised a right under the Act; its imposition was what prompted F to exercise a right under the Act – There can be no contravention of section 74 in such circumstances – Application dismissed

HIGHLAND FARM INC.; RE: Gregory Farinha; RE: Director of Employment Standards; OLRB File No. 1581-13-ES; Dated April 2, 2014; Panel: Mary Anne McKellar (5 pages)

Construction Industry – *Prima facie* – Trade Union – Unfair Labour Practice – Members of the International Brotherhood of Boilermakers approached BACU to assist them in forming a new union to displace the Boilermakers – Once the Boilermakers learned of these efforts, they advised those joining the new union that they would be expelled from the Boilermakers; they would no longer be referred to work; and they would lose access to the pension plan and health and welfare plans – The individual members alleged this was intimidation and coercion and a breach of the Act as it prevented them from exercising their right to join a trade union of their choice – The Board was satisfied that a trade union is entitled under the Act to refuse to refer individuals to employment who have been expelled from membership in the union even when that expulsion occurred because those individuals violated that union's constitution by joining or supporting a rival trade union – Making it clear to members that they will be expelled from membership if they join or support another trade union does not contravene the Act – The Board noted that while the applicants are certainly free to join another trade union, this choice does not relieve them of the consequences that result from that decision, which here would include expulsion from the Boilermakers – The Board was satisfied that the Boilermakers were entitled to take steps to counter the applicants' organizing efforts by immediately and forcefully communicating that support for a rival trade union was a serious violation of the Boilermakers' constitution and members who did join or support the rival would be expelled – Application dismissed

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS ; RE: James Watson, Larry Ste. Croix, Kenneth Kilday et al ; OLRB File No. 3442-12-U; Dated April 7, 2014; Panel: Harry Freedman (13 pages)

Certification – Constitutional Law – Construction Industry – Local 183 applied for certification for all employees at the Vaughan Yard, one of four different rail terminals run by Rail-Term, where shipping containers (tractor trailer/rail car sized containers) are loaded and unloaded from trains on to, and off of, tractor trailer trucks – Rail-Term's operation at the Vaughan Yard consisted solely of operating shunt trucks which move trailers and containers throughout the Vaughan Yard – It was Rail-Term's position that its labour relations were federally regulated – The issue before the Board was whether Rail-Term's essential operational nature is vital, essential or integral to a federal head of power – First, the Board had no difficulty concluding that Vaughan Yard was a part of CP's federal undertaking since this must include the terminals that CP operates where its railway stops, unloads and reloads – The Board noted that the normal and habitual activity of CP as a railway is the transportation of goods across the country by rail and that must include the point where the goods are loaded and unloaded from the train, otherwise it would be difficult to see how Parliament could effectively regulate the railway as a railway – The Board stated that just as the jurisdiction over aeronautics must include the places where airplanes land and are loaded and unloaded (and not just the flight of the airplanes), so too must the regulation of railways encompass the operation of their terminals – Second, the Board found that even if it was incorrect and the entirety of the Vaughan Yard was not a federal undertaking, for all the same reasons it gave earlier, the loading and unloading of trains must be part of CP's federal undertaking and thus subject to federal regulation, that is, it would simply not be possible to effectively regulate CP as a federal railway without regulating the loading and unloading of the trains – Application dismissed

RAIL–TERM INC.; RE: Labourers' International Union of North America, Local 183; OLRB File No. 1538-13-R; Dated April 14, 2014; Panel: Jesse M. Nyman, Richard O'Connor and Carol Phillips (22 pages)

Certification – Non-Construction Employer – The Regional Municipality sought an exemption from the construction provisions of the Act, asserting that it performs no work in construction for which it might be paid by a third party –The Board cited two instances where the Regional Municipality, as owner of a mall, performed work for tenants – The Board stated that once an employer does any construction work and receives payment for that work from an unrelated person, it doesn't matter for whose benefit the work was done (the tenant, the employer, or a building owner), the employer cannot qualify as a non-construction employer – Application for non-construction employer declaration dismissed – Matter continues

THE REGION MUNICIPALITY OF WATERLOO; RE: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America; RE: The Canadian Union of Public Employees Local 1656; OLRB File No. 2812-12-R; Dated April 14, 2014; Panel: Bernard Fishbein (18 pages)

Employee – Employment Standards – The applicant sought review of an ESO's finding that the claimant was an employee within the meaning of s. 1(2) of the ESA – The applicant argued that the claimant's placement was an extension of a rehabilitation programme he had successfully completed – With an honorarium, room and board, and a structured environment, the placement was to ease the claimant's return to society – Time sheets completed by the claimant and signed off by a supervisor were, according to the applicant, simply a tool to teach the claimant aspects of responsibility and did not accurately reflect his duties or hours of service – The claimant did not attend the proceeding – Midway through the second day of hearing, the applicant and the Director of Employment Standards reached a settlement in which the applicant agreed to withdraw its application in all respects except the quantum – When the matter resumed, the Board rejected the applicant's offer of an *ex gratia* payment of three weeks' wages – The Board held that once the applicant conceded its liability, accepting that the claimant was its employee, the Board could not acquiesce to the voluntary payment; it had to ascertain a reasonable amount to compensate the claimant in accordance with the minimum standards of the Act – Order amended

TEEN CHALLENGE INC.; RE: Arnold Banick; RE: Director of Employment Standards; OLRB File No. 0120-13-ES; Dated April 28, 2014; Panel: Bernard Fishbein (8 pages)

COURT PROCEEDINGS

Construction Industry – Judicial Review – In a series of decisions the Board found that the International had just cause to order the merger of two locals with a third (see [2011] OLRB Rep Nov/Dec 752) – The two locals applied for judicial review attacking the Board's application of its consultation process in that it restricted the locals from calling certain evidence and from compelling certain witnesses to testify – The Court reviewed the Board's use of its consultation powers and noted that the Board's work within the construction industry is essentially a speciality within a specialty and it is this expertise which in part informs and facilitates the choice of process – The Court found the Board's finding that there was just cause was supported with extensive and detailed reasoning – The Court also noted that it has been four years since the merger, one of the significant individuals involved has since died and accordingly any reversal of the merger would create significant prejudice for Local 353 and the International – Finally, the Court noted it was troubled by the Board's decision not to require the production of a report, when the first time counsel for the local unions became aware of this Report was during the cross examination of F – The Court did not consider that the Board gave proper consideration to that matter (it did not order production, it made gratuitous comments about counsel's anticipated cross-examination and it failed to read and preserve the Report before making the evidentiary ruling) – The Court concluded the Board's decisions made in the process were well within the range of reasonable expectations and outcomes and its reasons were adequate; additionally its widespread use of the consultation process was within the reasonable expectations of the parties – Considering all the circumstances, including the Board's failure to order production of the Report, the Court declined to quash the Board's decision and dismissed the application

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 894; RE: International Brotherhood of Electrical Workers,

First District-Canada et al; ; OLRB File No.3893-11-R; Court File No. 321/12; Dated April 9, 2014; Panel: Marrocco, Nordheimer and Whitaker JJ. (7 Pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Mary McCabe Court File No.14-2012 **(Ottawa)**	2737-12-U	Pending
Rail Cantech Court No. 169/14	2661-13-R	Pending
LIUNA - Rudyard; Zzen Divisional Court No. 485/13	0318-13-R	Pending
Richtree Markets Inc. Divisional Court No. 31/14	1768-13-U	Pending
2218783 Ontario Inc. Divisional Court No. 13-DV-0133 **(Brampton)**	2872-12-ES	Pending
Jefferson Mendonca Divisional Court No. 478/13	2146-10-U 0006-13-R	June 26, 2014
Neivex et al. Divisional Court No. 416/13	0441-13-R	Pending
Merc Electrical Limited Divisional Court No. 437/13	0452-13-G	Pending
Sysco Fine Meats of Toronto a division of Sysco Canada Inc Divisional Court No. 414/13	3484-11-R	October 28, 2014
Godfred Kwaku Hiamey Divisional Court No. 345/13; 346/13	2906-10-U 3568-10-U	Pending
Gate Gourmet Canada Inc. Divisional Court No. 276/13	3688-11-U	June 12, 2014
Biggs & Narciso Construction Services Inc. Divisional Court No. 181/13 M43574	1307-10-R	Dismissed January 30, 2014 Reason February 14, 2014 LIUNA Seek Leave
Weihua Shi Divisional Court No. 158/13 M35837	0273-10-ES	Seeking Leave to SCC
Durval Terciera, et al Court of Appeal No. C 58059 & C58146	1475-11-U	September 11, 2014 (Court of Appeal)
IBEW, Local 894 Divisional Court No. 321/12	3174-09-U	Dismissed April 9, 2014
EllisDon Corporation Court of Appeal C58371	0784-05-G	October 8, 2014 Court of Appeal

SMW v. EllisDon Court of Appeal C58371		October 8, 2014 Court of Appeal
EllisDon Corporation Divisional Court No. 309/12	2076-10-R	Pending
Hassan Hasna Divisional Court No. 83/12	3311-11-ES	Pending
Rainbow Concrete Industries Limited Divisional Court No. 925/13 M43026	2692-06-ES	Dismissed; Leave to CA Dismissed April25, 2014
John McCredie v. OLRB et al Divisional Court No. 1890/11 **(London)**	1155–10–U	Pending
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 213/11	0816–10–U 0817–10–U	Dismissed; Seeking Motion to set aside
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 383/10	0290–08–U 0338–08–U	See above
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 431/08	4045–06–U et al	See above

ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 33

ACCREDITATION in the CONSTRUCTION INDUSTRY UNDER S. 136 of the *LABOUR RELATIONS ACT, 1995* (NON-ICI)

Where a union or council of unions represents the employees of more than one employer, an employers' organization may apply to the Board to be accredited as the bargaining agent for all employers in one or more sector of the construction industry (other than ICI) and in the geographic area for which the union or council of unions has bargaining rights.

The Board determines an appropriate unit of employers by reference to geographic areas and sectors of the construction industry. If the employers' organization represents a majority of employers in the unit and that majority of employers employs a majority of the employees, the employers' organization will be accredited as the bargaining agent, provided that:

1. it is a properly constituted organization which has been vested with appropriate authority by each of the employers it represents;
2. it has not received trade union support, and
3. it does not discriminate against any person because of any ground of discrimination prohibited by the *Human Rights Code* or the *Canadian Charter of Rights and Freedoms*.

With respect to the vesting of authority, evidence of membership in the employers' organization is not necessary; evidence that employers have vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent (that is, have authorized the employers' association to bargain and enter into a collective agreement on their behalf) is sufficient.

On accreditation, all the rights, duties and obligations of employers for whom the employers' organization becomes the bargaining agent apply, with necessary modifications, to the accredited employers' organization.

As long as the employers' organization is entitled to represent the employers, individual bargaining between the union and employers is prohibited and any such agreement entered into is void.

In order to be accredited as the exclusive bargaining agent for all the employers in a unit of employers, the employers' organization must not only represent a majority of employers in the unit of employers, but the employers it represents must have employed a majority of the employees who were employed by all the employers in that unit of employers in the week immediately before the application was made to the Board.

A complete application for accreditation consists of the Board form, a copy of the Applicant's charter, constitution or by-laws; a description of the unit of employers, including the appropriate geographic area and sector; and the Applicant's List of Employers.

The Board issues a Confirmation of Filing, providing a Response Date. The Response Date is the last day for the Applicant to file evidence of membership of employers or evidence of authorization by employers; it is also the date by which the respondent trade union must file its response and Employer lists; finally, it is the date by which an intervening organization (interested employers' organizations or trade unions) must file their interventions.

The Applicant must file a declaration concerning representation documents not later than two days after the Response Date.

The Response must set out in detail the unit of employers the Responding Party trade union claims is appropriate for accreditation, which must include a description of the unit of employers, including the geographic scope and sector.

The Application and Response must be accompanied with their requisite Employer Lists.

Applicant's list: Employers in proposed bargaining unit, as defined by geographic scope and sector. The list will include (a) member employers of the organization; (b) non-member employers who have given the organization authorization to bargain on their behalf; and (c) other employers who could be in the geographic scope and sector applied for.

Responding Party trade union's list: Employers who have had employees working in the proposed bargaining unit in the year immediately preceding the application (may overlap with Applicant's list).

If the Responding Party proposes a different geographic area or sector for the bargaining unit, the Responding Party should include a second list of employers with employees in its proposed geographic area. The purpose of this list is to highlight the differences in geographic areas between the bargaining unit proposed by the Applicant and the bargaining unit proposed by the Responding Party.

The Board sends notice of the application (and any meetings) to any employers' organization or trade union identified by the Applicant or Respondent as having an interest in the application. Interested parties must file an intervention setting out their claim to participation in the proceeding.

A Labour Relations Officer is assigned to the file to assist the parties in compiling a list of potentially affected or interested employers, to facilitate the resolution of outstanding issues, and to ascertain the method and manner of publication of the notice to employers.

Once the Board has obtained the Officer's report and has made the initial determination of employers in the unit of employers, the Board fixes an Employer Filing Date and may set the matter down for hearing, if necessary. The Employer Filing Date is the last day for any employer to file the Employer Filing in Accreditation (with a list of employees, including place of work and description of project), a statement of objection, or any other issue.

The Board reviews what has occurred between the parties and with the Labour Relations Officer, and issues a decision directing the publication of a Notice to All Employers of the proposed Accreditation, as well as its posting on the Board's website. The purpose of the Notice is to advise every employer who might be affected by the Accreditation of the application.

Every employer who receives notice of the application must file the requisite Employer Filing. This is essential for the Board to be able to make a final determination as to the number of employers on the respective lists.

An Employer Filing should contain the following information:

- whether the Responding Party trade union is entitled to bargain on behalf of employees working in the proposed bargaining unit;
- whether the employer has employed workers affected by the application within the last year;
- whether the weekly payroll is representative; if it is not, the employer should explain the discrepancy;
- further submissions, if any, with respect to the application; and
- list of employees.

Before granting the accreditation, the Board must determine:

1. the Responding Party trade union represents employees of more than one employer in the construction industry;
2. the Applicant is a properly constituted employers' organization that represents and has been vested with authority by employers in the construction industry;
3. the description of the appropriate bargaining unit;
4. the number of employers in the bargaining unit on the application date who have had employees in their employ in that unit within the last year and whose employees are represented by the Responding Party trade union;
5. the number of such employers represented by the Applicant on the application date;
6. whether the Applicant represents a majority of such employers;
7. the number of employees of such employers on the payroll of each such employer for the weekly payroll period prior to the date of application (or such other payroll period as the Board considers advisable); and
8. whether the employers represented by the Applicant employed a majority of such employees.

The Board may schedule a hearing if necessary to make any of the above determinations. Notice of hearing will be sent by the Registrar to the Applicant, Responding Party, and every other party that filed a timely intervention or Employer Filing in Accreditation.

An accredited employers' organization has a duty to fairly represent the employers in the bargaining unit for which it is accredited and must not deny or terminate membership, except for fair and reasonable cause, or charge initiation fees, dues, or assessments that are, in the opinion of the Board, unreasonable or discriminatory.

For more information see the Board's website and Rule 23 of the Board's Rules of Procedure.

Applications to terminate an accreditation will be handled by the Board in a process similar to accreditation. There are no Board Forms for terminating an accreditation, and no Information Bulletin.

Form A-93

File No.: _____

LABOUR RELATIONS ACT, 1995
RESPONSE TO APPLICATION FOR ACCREDITATION
CONSTRUCTION INDUSTRY
BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

Applicant,

- and -

Responding Party.

You must file one signed original of this form with the Board.

[ ] The responding party states in response to the application:

OR

[ ]_____intervenes in this proceeding and states in response to the application:
(Name of Intervenor)

1. (a) Correct name of the responding party/intervenor:

(b) Address, telephone number, facsimile number and e-mail address of the responding party/intervenor:

(c) Name, address, telephone number, facsimile number and e-mail address of a contact person for the responding party/intervenor:

(d) E-mail address of representative and assistant (if any):

- □ **Counsel:** **Assistant:**
- □ **Paralegal:** **Assistant:**
- □ **other:** **Assistant**:

2. (a) Name, address, telephone number, facsimile number and e-mail address (if any) of any employer's organization, trade union or council of trade unions that may have an interest in this application:

(b) The party named in paragraph 2(a) is affected by the application for the following reason(s):

[You must deliver to the person(s) named in paragraph 2(a): a copy of the application, a copy of the Notice to Responding Party and/or Affected Party of Application for Accreditation, Construction Industry (C-39), a completed copy of your response, and a blank response form. You must also complete the attached Certificate of Delivery.]

3. Detailed description of unit of employers claimed by responding party to be appropriate for accreditation: (Reference ***must*** be made to the sector(s) of the construction industry and the geographic area(s) or parts thereof claimed).

4. Representations as to the appropriateness of the unit described in paragraph 3, including the history of collective bargaining, if any, of the applicant and the responding party: (Attach additional sheets as required)

5. The number of employers in the unit described by the applicant as being appropriate for accreditation as of the date the application was made:

6. The number of employers in the unit claimed by the responding party to be appropriate for accreditation as of the date the application was made:

7. Approximate number of members of the responding party working in the area(s) and sector(s) described in the unit of employers claimed by the applicant to be appropriate as of the date the application was made:

8. In respect of the order(s) requested by the applicant, the responding party/intervenor states:

_____

_____

_____

_____

(Describe your position with respect to the order(s) requested by the applicant.)

9. **[Complete this section only if you are intervening in this case.]**

The intervenor claims to be affected by the application for the following reasons:

10. Other relevant statements:

DATED _____.

_____

Signature for the Responding Party/Intervenor

Form A-93

CERTIFICATE OF DELIVERY

1. I certify that a completed copy of the response was delivered to [ ] the applicant, [ ] the responding party, and/or [ ] any affected party named in paragraph 2 of the application or in a response filed by another party, as follows:

Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered
Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered

2. **[Complete this section only if you named an affected party in paragraph 2 of your response that was not named in paragraph 2 of the application or in a response filed by another party.]**

I certify that the following documents were delivered to the affected party named in paragraph 2 of this response, as follows:

- a copy of the application;
- a copy of the Notice to Responding Party and/or Affected Party of Application for Accreditation, Construction Industry (Form C-39)
- a completed copy of the response; and
- a blank copy of a Response to Application for Accreditation, Construction Industry (Form A-93)
- a copy of Employer Lists

Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered

[Complete section 3 or section 4 or section 5 below.]

Form A-93

3. The documents were delivered by [ ] facsimile transmission or [ ] hand delivery on _____ (Date) at _____ a.m./p.m.

4. These documents were sent by [ ] regular mail on _____ (Date), at _____ a.m./p.m.

5. The documents were given to _____ on _____, and I was advised that they would be delivered not later than _____ (Date) at _____ a.m./p.m.

NAME: _____

TITLE: _____

SIGNATURE: _____

Form A-93

File No.: _____

LABOUR RELATIONS ACT, 1995
RESPONSE TO APPLICATION FOR ACCREDITATION
CONSTRUCTION INDUSTRY
BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

Applicant,

- and -

Responding Party.

You must file one signed original of this form with the Board.

[ ] **The responding party states in response to the application:**

OR

[ ] _____ **intervenes in this proceeding and states in response to**
(Name of Intervenor)

the application:

1. (a) Correct name of the responding party/intervenor:

(b) Address, telephone number, facsimile number and e-mail address of the responding party/intervenor:

(c) Name, address, telephone number, facsimile number and e-mail address of a contact person for the responding party/intervenor:

(d) E-mail address of representative and assistant (if any):

- **Counsel:** **Assistant:**
- **Paralegal:** **Assistant:**
- **other:** **Assistant**:

2. (a) Name, address, telephone number, facsimile number and e-mail address (if any) of any employer's organization, trade union or council of trade unions that may have an interest in this application:

(b) The party named in paragraph 2(a) is affected by the application for the following reason(s):

[You must deliver to the person(s) named in paragraph 2(a): a copy of the application, a copy of the Notice to Responding Party and/or Affected Party of Application for Accreditation, Construction Industry (C-39), a completed copy of your response, and a blank response form. You must also complete the attached Certificate of Delivery.]

3. Detailed description of unit of employers claimed by responding party to be appropriate for accreditation: (Reference ***must*** be made to the sector(s) of the construction industry and the geographic area(s) or parts thereof claimed).

4. Representations as to the appropriateness of the unit described in paragraph 3, including the history of collective bargaining, if any, of the applicant and the responding party: (Attach additional sheets as required)

5. The number of employers in the unit described by the applicant as being appropriate for accreditation as of the date the application was made:

6. The number of employers in the unit claimed by the responding party to be appropriate for accreditation as of the date the application was made:

7. Approximate number of members of the responding party working in the area(s) and sector(s) described in the unit of employers claimed by the applicant to be appropriate as of the date the application was made:

8. In respect of the order(s) requested by the applicant, the responding party/intervenor states:

_____

_____

_____

_____

(Describe your position with respect to the order(s) requested by the applicant.)

9. **[Complete this section only if you are intervening in this case.]**

The intervenor claims to be affected by the application for the following reasons:

10. Other relevant statements:

DATED _____.

_____

Signature for the Responding Party/Intervenor

Form A-93

CERTIFICATE OF DELIVERY

1. I certify that a completed copy of the response was delivered to [ ] the applicant, [ ] the responding party, and/or [ ] any affected party named in paragraph 2 of the application or in a response filed by another party, as follows:

Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered
Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered

2. **[Complete this section only if you named an affected party in paragraph 2 of your response that was not named in paragraph 2 of the application or in a response filed by another party.]**

I certify that the following documents were delivered to the affected party named in paragraph 2 of this response, as follows:

- a copy of the application;
- a copy of the Notice to Responding Party and/or Affected Party of Application for Accreditation, Construction Industry (Form C-39)
- a completed copy of the response; and
- a blank copy of a Response to Application for Accreditation, Construction Industry (Form A-93)
- a copy of Employer Lists

Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered

[Complete section 3 or section 4 or section 5 below.]

3. The documents were delivered by [ ] facsimile transmission or [ ] hand delivery on _____ at _____ a.m./p.m.
(Date)

4. These documents were sent by [ ] regular mail on _____,
(Date)
at _____ a.m./p.m.

5. The documents were given to _____ on _____, and I was advised that they would be delivered not later than _____ at _____ a.m./p.m.
(Date)

NAME: _____

TITLE: _____

SIGNATURE: _____

Form A-94

File No.: _____

LABOUR RELATIONS ACT, 1995

EMPLOYER FILING, APPLICATION FOR ACCREDITATION, CONSTRUCTION INDUSTRY

BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

Applicant,

- and -

Responding Party,

- and -

Intervenor.

Name of Employer

makes the following filing in this case.

The employer states:

1. (a) Address, telephone number, facsimile number and e-mail address of the employer:

(b) Name, address, telephone number, facsimile number and e-mail address if any of a contact person for the employer:

(c) E-mail address of representative and assistant (if any):

□ **Counsel:** **Assistant:**

□ **Paralegal:** **Assistant:**

□ **other:** **Assistant**:

2. The employer is an employer in the construction industry.

3. The responding party [__] is [__] is not entitled to bargain on behalf of the employees of the employer affected by the application. (Refer to paragraph 1 of Form B-97, Notice to Employers of Application for Accreditation.)

4. The employer [__] has [__] has not employed employees affected by the application within one year prior to the date of the making of the application. (Refer to paragraph 1 of Form B-97, Notice to Employers of Application for Accreditation.)

5. The employer states that the number of employees on the payroll for the weekly payroll period immediately preceding the date of the application [__] is [__] is not representative of the number of employees affected by this application normally employed by the employer. (Where the number is not representative, give details.)

6. Attached to this filing is a completed and verified Schedule H List of Employees.

7. Submissions, if any, which the employer wishes to make at the hearing of this application: **(Attach additional pages if necessary.)**

DATED _____.

_____

Signature for the Employer

Form A-94

CERTIFICATE OF DELIVERY

1. I certify that completed copies of this filing (Form A-94) and Schedule H were delivered to [ ] the applicant and [ ] the responding party, as follows:

Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered
Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered

[Complete section 2 or section 3 or section 4 below.]

2. The documents were delivered by [ ] facsimile transmission or [ ] hand delivery on _____ (Date) at _____ a.m./p.m.

3. The documents were posted by [ ] regular mail on _____ (Date) at _____ a.m./p.m.

4. The documents were given to _____ (Name of Courier) on _____ (Date), and I was advised that they would be delivered not later than _____ (Date) at _____ a.m./p.m.

NAME: _____

TITLE: _____

SIGNATURE: _____

Form A-95

File No.: _____

LABOUR RELATIONS ACT, 1995
DECLARATION CONCERNING REPRESENTATION DOCUMENTS APPLICATION FOR ACCREDITATION, CONSTRUCTION INDUSTRY
BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

Applicant,

- and -

Responding Party.

You must file one signed original of this form with the Board.

I, ..., the ..... of the
(name) (office)

applicant, declare that, to the best of my knowledge, information and belief:

1. The documents submitted in support of the application represent documentary evidence of the representation of ..... employers who were employers in the unit of
(number)

employers that the applicant claims to be appropriate for accreditation on the application date.

2. On the basis of my personal knowledge or inquiries that I have made, I state that each of the signatures for each of the employers on behalf of whom such documentary evidence is submitted is that actual signature of a person who had the authority to sign such documents.

DATED _____.

_____
(signature)

Form A-96

File No.: _____

LABOUR RELATIONS ACT, 1995
INTERVENTION, ACCREDITATION OR TERMINATION OF ACCREDITATION AS BARGAINING AGENT, CONSTRUCTION INDUSTRY
BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

Applicant,

- and -

Responding Party.

You must file one signed original of this form with the Board.

_____ intervenes in this case.
(Name of Intervenor)

The Intervenor states:

1. (a) Address, telephone number, facsimile number and e-mail address of the intervenor:

(b) Name, address, telephone number, facsimile number and e-mail address of a contact person for the intervenor:

(c) E-mail address of representative and assistant (if any):

- □ **Counsel:** **Assistant:**
- □ **Paralegal:** **Assistant:**
- □ **other:** **Assistant**:

2. (a) Name, address, telephone number, facsimile number and e-mail address of any other person(s) who may be affected by the application:

(b) The person(s) named in paragraph 2(a) is (are) affected by the application for the following reason(s):

3. The intervenor claims to be affected by the application for the following reason(s):

4. The intervenor submits with this intervention the following documentary evidence in support of its claim to an interest in this case:

5. In support of its intervention the intervenor relies on the following material facts and wishes to make the following submissions:

_____

_____

(Include all of the material facts on which you rely including the circumstances, what happened, where and when it happened, and the names of any persons said to have acted improperly. Please note that you will not be allowed to present evidence or make any representations about any material fact that was not set out in the intervention and filed promptly in the way required by the Board's Rules of Procedure, except with the permission of the Board.)

6. Other relevant statements: (Attach additional pages, if necessary.)

DATED _____.

_____
Signature for the Intervenor

Form A-96

CERTIFICATE OF DELIVERY

1. I certify that a completed copy of the intervention was delivered to [ ] the applicant, [ ] the responding party, and/or [ ] any affected party named in paragraph 2 of the application or in a response or intervention filed by another party, as follows:

Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered

Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered

2. **[Complete this section only if you named an affected party in paragraph 2 of your response that was not named in paragraph 2 of the application or in a response filed by another party.]**

I certify that the following documents were delivered to the affected party named in paragraph 2 of this intervention, as follows:

- a copy of the application;
- a copy of the Notice to Responding Party and/or Affected Party of Application for Accreditation, Construction Industry (Form C-39)
- a completed copy of the intervention; and
- a blank copy of an Intervention, Accreditation or Termination of Accreditation, Construction Industry (Form A-96)

Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered

Form A-96

[Complete section 3 or section 4 or section 5 below.]

3. The documents were delivered by [ ] facsimile transmission or [ ] hand delivery on _____ (Date) at _____ a.m./p.m.

4. These documents were sent by [ ] regular mail on _____ (Date), at _____ a.m./p.m.

5. The documents were given to _____ on _____, and I was advised that they would be delivered not later than _____ (Date) at _____ a.m./p.m.

NAME: _____

TITLE: _____

SIGNATURE: _____

Form A-96

File No.: _____

LABOUR RELATIONS ACT, 1995
INTERVENTION, ACCREDITATION OR TERMINATION OF ACCREDITATION AS BARGAINING AGENT, CONSTRUCTION INDUSTRY
BEFORE THE ONTARIO LABOUR RELATIONS BOARD

Between:

Applicant,

- and -

Responding Party.

You must file one signed original of this form with the Board.

_____ intervenes in this case.
(Name of Intervenor)

The Intervenor states:

1. (a) Address, telephone number, facsimile number and e-mail address of the intervenor:

(b) Name, address, telephone number, facsimile number and e-mail address of a contact person for the intervenor:

(c) E-mail address of representative and assistant (if any):

- ☐ **Counsel:** **Assistant:**
- ☐ **Paralegal:** **Assistant:**
- ☐ **other:** **Assistant**:

2. (a) Name, address, telephone number, facsimile number and e-mail address of any other person(s) who may be affected by the application:

(b) The person(s) named in paragraph 2(a) is (are) affected by the application for the following reason(s):

3. The intervenor claims to be affected by the application for the following reason(s):

4. The intervenor submits with this intervention the following documentary evidence in support of its claim to an interest in this case:

5. In support of its intervention the intervenor relies on the following material facts and wishes to make the following submissions:

_____

_____

(Include all of the material facts on which you rely including the circumstances, what happened, where and when it happened, and the names of any persons said to have acted improperly. Please note that you will not be allowed to present evidence or make any representations about any material fact that was not set out in the intervention and filed promptly in the way required by the Board's Rules of Procedure, except with the permission of the Board.)

6. Other relevant statements: (Attach additional pages, if necessary.)

DATED _____.

_____

Signature for the Intervenor

Form A-96

CERTIFICATE OF DELIVERY

1. I certify that a completed copy of the intervention was delivered to [ ] the applicant, [ ] the responding party, and/or [ ] any affected party named in paragraph 2 of the application or in a response or intervention filed by another party, as follows:

Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered

Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered

2. **[Complete this section only if you named an affected party in paragraph 2 of your response that was not named in paragraph 2 of the application or in a response filed by another party.]**

I certify that the following documents were delivered to the affected party named in paragraph 2 of this intervention, as follows:

- a copy of the application;
- a copy of the Notice to Responding Party and/or Affected Party of Application for Accreditation, Construction Industry (Form C-39)
- a completed copy of the intervention; and
- a blank copy of an Intervention, Accreditation or Termination of Accreditation, Construction Industry (Form A-96)

Name of Organization and name and title of person to whom documents were delivered	Address or facsimile number to which documents were delivered

Form A-96

[Complete section 3 or section 4 or section 5 below.]

3. The documents were delivered by [ ] facsimile transmission or [ ] hand delivery on _____ (Date) at _____ a.m./p.m.

4. These documents were sent by [ ] regular mail on _____ (Date), at _____ a.m./p.m.

5. The documents were given to _____ on _____, and I was advised that they would be delivered not later than _____ (Date) at _____ a.m./p.m.

NAME: _____

TITLE: _____

SIGNATURE: _____

ONTARIO LABOUR RELATIONS BOARD

ACCREDITATION – APPLICANT'S (EMPLOYER ASSOCIATION'S)
LIST OF EMPLOYERS IN PROPOSED UNIT

List (alphabetically arranged) of all employers in the proposed unit of employers set out in the Application on behalf of whose employees the Responding Party is entitled to bargain as of the Application Date.

Instructions

1. Under "Source of Bargaining Rights" indicate whether the responding party is entitled to bargain as a result of a collective agreement, a recognition agreement or a certificate of the Labour Relations Board that has not yet resulted in a collective agreement.
2. Under "Relevant Date" give the date of the collective agreement, recognition agreement or certificate, as the case may be.

Name, address, telephone number and facsimile number of Employer	Source of Bargaining Rights	Relevant Date
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		

This list has been prepared by me or under my instruction and I confirm that it is accurate.

Name:

Date:

Signature

(INCLUDE ADDITIONAL PAGES WHERE NECESSARY)

ONTARIO LABOUR RELATIONS BOARD

OLRB Case No.:

NAME OF EMPLOYER:

ACCREDITATION - LIST OF EMPLOYEES

List of employees on whose behalf the Responding Party Trade Union is entitled to bargain, who were working in the unit set out in the Board's decision during the weekly payroll period immediately preceding the Application Date.

Instructions

Give the location of the job site at which employees worked and describe the type of project on which the work was being done (e.g. residential, heavy engineering, etc.) Then alphabetically list the employees at work at each site, and the occupational classification for each employee.

Location of Job Site and Type of Project	Names of Employees at Work at the Job Site	Occupational Classification
	1.	
	2.	
	3.	
	4.	
	5.	
	6.	
	7.	
	8.	
	9.	
	10.	
	11.	
	12.	
	13.	
	14.	

This list has been prepared by me or under my instruction and I confirm that it is accurate.

Name:

Signature:

Date:

(INCLUDE ADDITIONAL PAGES WHERE NECESSARY)

ONTARIO LABOUR RELATIONS BOARD

OLRB Case No.: _____

ACCREDITATION – RESPONDING PARTY'S (TRADE UNION'S) LIST OF EMPLOYERS

(with Bargaining Rights in the Geographic Area and Sector applied for)

List (alphabetically arranged) of all employers for whom the Responding Party Trade Union is entitled to bargain as of the Application Date

Name, address, telephone number and facsimile number of Employer	Source of Bargaining Rights	Relevant Date	Area (Use additional pages if necessary)
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

This list has been prepared by me or under my instruction and I confirm that it is accurate.

Name:

Date:

Signature:

(INCLUDE ADDITIONAL PAGES WHERE NECESSARY)

ONTARIO LABOUR RELATIONS BOARD

OLRB Case No.: _____

ACCREDITATION – RESPONDING PARTY'S (TRADE UNION'S) LIST OF EMPLOYERS

(with Bargaining Rights in a different Geographic Area and Sector)

List (alphabetically arranged) of all employers for whom the Responding Party Trade Union is entitled to bargain as of the Application Date in a different geographic area and sector than the one applied for.

Name, address, telephone number and facsimile number of Employer	Source of Bargaining Rights	Relevant Date	Area (Use additional pages if necessary)
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

This list has been prepared by me or under my instruction and I confirm that it is accurate.

Name:

Date:

Signature:

(INCLUDE ADDITIONAL PAGES WHERE NECESSARY)

ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 25

Jurisdictional Disputes in the construction industry

This Information Bulletin describes the procedures that must be followed when a party applies to the Board for a determination of a work assignment (jurisdictional dispute) under section 99 of the *Labour Relations Act, 1995*. The Board has established specific procedures for this type of application, allowing for abridged time lines and filing requirements. The Board will handle jurisdictional disputes by way of a consultation and not a hearing.

It is important that parties involved in a jurisdictional dispute read and comply with the directions in this Bulletin and the Board's Rules of Procedure. Failure to do so may result in the application or other materials not being processed by the Board.

WHO MAY APPLY?

Any party can file a "Notice of Jurisdictional Dispute" at any time. An applicant will typically file a jurisdictional dispute application when it wants the Board to determine whether bargaining unit work has been assigned to the appropriate union. Such an application arises in two ways:

1. when a trade union or council of trade unions or their agent was or is requiring an employer to assign particular work to one trade union rather than another; or
2. when an employer was or is assigning particular work to one trade union rather than another.

FILING THE NOTICE

A Notice of Jurisdictional Dispute will identify the applicant, responding parties and any other party that may be affected by the application. The Notice should set out a description of the project and the work in dispute, and what caused the applicant to identify a dispute over the work assignment. The Notice will not contain the information or argument that will be required later in the brief.

The Board's processes allow for an expedited processing of a jurisdictional dispute. If a party seeks to have the proceeding expedited, it should indicate this in its notice or response.

The applicant must deliver copies of its Notice of Jurisdictional Dispute, along with blank response forms, a copy of the Notice, to the responding and affected parties before filing its materials with the Board. If the applicant is the employer, there are specific filing obligations set out below.

If the applicant is requesting an expedited consultation schedule, it should set out its proposed time lines in the application.

A Notice of Jurisdictional Dispute must be filed with the Board within five (5) days of its delivery to the other parties.

The applicant will not necessarily file the first brief in the Jurisdictional Dispute.

CONFIRMATION OF FILING

When the Board receives a Notice of Jurisdictional Dispute, it will issue a Confirmation of Filing to the responding and affected parties

The Confirmation of Filing will set out the appointment of a Labour Relations Officer and schedule the date for a pre-consultation conference and for the consultation itself.

The date for the pre-consultation conference will be within fifteen (15) days from the date of filing of the Notice of Jurisdictional Dispute.

If there has been a grievance filed relating to the same dispute, the Board will in all likelihood suspend its processing until the resolution of the jurisdictional dispute.

RESPONSE

The Response to a Notice of Jurisdictional Dispute must be filed within 5 days of the date of the Confirmation of Filing. A response will identify the responding party or intervenor and set out the names of any other affected parties that may not have been included in the Notice.

The Response will describe the project and the nature of the work in dispute, state when the dispute arose, and set out the responding party's position as to the correct assignment of the work in dispute.

If the responding party is requesting an expedited consultation schedule, it should set out its proposed time lines.

EMPLOYER'S NOTICE/RESPONSE

An applicant or responding party employer must file with its notice or response sufficient documents to enable the parties or the Board to draft a description of the work in dispute. These documents will include plans, drawings, specifications, sketches or other documents which depict or describe the general project and the Work in Dispute. The employer may choose to file only the most relevant extracts from these documents and bring full copies to the pre-consultation conference

Frequently, a Jurisdictional Dispute is filed in circumstances where a grievance has also been filed against an employer. Generally speaking, the Board has declined to award damages as a remedy in such a grievance where it finds the employer has incorrectly assigned the work, except where it finds that the employer's assignment was unreasonable in the circumstances. Failure to file the necessary material to enable the parties and the Board to accurately define the Work in Dispute will generally be strong evidence that the assignment was not made in a reasonable manner.

PRE-CONSULTATION CONFERENCE

The Board will convene a pre-consultation conference within fifteen (15) days of receiving a Notice of Jurisdictional Dispute. There will be three items on the agenda. First the Board will assist the parties to determine the description of the work in dispute, failing which the Board will draft the description; second, the Board will attempt to mediate the dispute; third, the Board will fix the schedule for filing of briefs and set the date for the consultation.

Parties will be expected to attend the pre-consultation conference with adequate resources and materials to make appropriate submissions and to enter into binding, enforceable agreements.

Work in Dispute

The parties will attempt with the Board to arrive at an agreed upon description of the work in dispute. If the parties cannot agree, the Board will set out the description for the purposes of the jurisdictional dispute. The Board may at the request of a party or on its own motion require any party to produce any document to assist in this process.

Mediation

The Board will take as long as necessary to attempt to mediate a settlement of the dispute.

Scheduling

The parties will attempt to agree on the schedule in which matters are to be done.

The union that claims the work was improperly assigned will file the first brief.

Absent agreement or a decision by the Board to the contrary, the times will be as follows:

(a) filing of first brief - 6 weeks from pre-consultation conference;

(b) filing of other parties' briefs - 6 weeks from receipt of first brief;

(c) filing of reply brief - 3 weeks from receipt of responding briefs.

The date of the consultation will be confirmed during the conference.

On occasion parties, particularly parties who reside outside of Toronto, may be of the view that the utility of an in-person pre-consultation conference is outweighed by the time, cost and effort of attending before the Board. The Board reminds parties that attendance at a pre-consultation conference may be dispensed with if they reach timely agreement in writing beforehand on the issues to be addressed including the specific description of the work in dispute and a schedule for the filing of briefs. However, before a pre-consultation conference is cancelled by the Board, such agreements will be reviewed by a Vice-Chair of the Board to ensure they are clear, meaningful and effectively describe the real parameters of what is in dispute – not only for the assembling and filing of relevant briefs, but for the consultation.

EXPEDITED SCHEDULING

In certain circumstances, the Board may, at the request of one party and where it considers it appropriate to do so, order a form of expedited scheduling. A party seeking an expedited schedule must provide compelling reasons for its request, such as agreement among the parties, or, where the Jurisdictional Dispute is virtually identical to one recently decided by the Board. If it is, the scheduling will be (absent agreement by all parties once an expedited schedule is ordered) as follows:

(a) all parties file briefs within 10 calendar days (excluding holidays only);

(b) all parties may file a reply brief in 4 calendar days;

(c) a consultation date is set for one or two days after the reply briefs are due;

(d) a "bottom line" decision will be rendered within 24 hours. The decision will be applicable to this particular dispute and will not be considered by the Board in any future jurisdictional dispute.

DECISION

Following the Pre-Consultation Conference the Board will issue a decision setting out the Work in Dispute, the schedule for filing briefs, any agreement of the parties and any other order or direction necessary for the conduct of the application.

MEDIATION MEETING

The Manager of Field Services will schedule a meeting with a Labour Relations Officer following the pre-consultation conference.

Once again, parties will be expected to attend this meeting with adequate resources, including a representative with authority to settle the dispute.

BRIEFS

There is no particular form for a brief. However, parties must include a copy of all documents on which they intend to rely at the consultation.

The argument portion of the brief shall not exceed ten (10) pages on 8½" by 11" paper, double-spaced, 12-pitch font.

Over the years, the Board has looked at a number of factors in determining a Jurisdictional Dispute. Some of these are employer practice, area practice, economy and efficiency, etc. You should include in your brief all of the submissions and documents with respect to the factors you say are relevant. You should only include submissions or documents with respect to the factors that you assert are material in this dispute. For instance, area practice and employer practice are frequently relevant and important issues in a jurisdictional dispute. A union's constitution rarely is. Only include submissions or material on factors that you assert make it clear that the work should be assigned to one trade rather than to another. If a factor does not, in your view, lead to any particular result, no submissions should be made about that factor.

If a responding party asserts that a factor that the applicant has not relied on is in fact of importance in the case, that party should set out its submissions as to why the issue favours one union over another. The responding party must deal with the merits of *both* unions' strengths or weaknesses on this issue. For example, a blanket statement that a trade union's members have the skills and training to do the work, without including any particulars as to *why* the other union's members lack the requisite skills and training, is not at all helpful. There will almost invariably be no opportunity for the responding party to reply to the applicant's response on this issue.

If a responding party raises a new issue, the applicant shall reply to this issue in its reply brief. New issues raised for the first time in reply briefs will not be considered.

No inference will be drawn from the fact that an applicant does not address a factor that is raised in a brief filed by a responding party. Parties should always refrain from filing unnecessary material.

CONSULTATION AND DECISION

A date for the consultation will be confirmed at the pre-consultation conference, or a new date will be scheduled.

The consultation will be completed in one day. At the beginning of the consultation, the Board will set time limits for each party's submissions so that the consultation is completed by the end of the day.

If the Board can render a bottom line decision, in advance of the full reasons, it will do so as soon as possible.

Board hearings are open to the public unless the panel decides that matters involving public security may be disclosed or if it believes that disclosure of financial or personal matters would be damaging to any of the parties. Hearings are not recorded and no transcripts are produced.

The Board issues written decisions, which may include the name and personal information about persons appearing before it. Decisions are available to the public from a variety of sources including the Ontario Workplace Tribunals Library, and over the internet at www.canlii.org, a free legal information data base. Some summaries and decisions may be found on the Board's website under *Highlights* and Recent Decisions of Interest at www.olrb.gov.on.ca.

IMPORTANT NOTE

IN ACCORDANCE WITH THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005*, THE BOARD MAKES EVERY EFFORT TO ENSURE THAT ITS SERVICES ARE PROVIDED IN A MANNER THAT RESPECTS THE DIGNITY AND INDEPENDENCE OF PERSONS WITH DISABILITIES. PLEASE TELL THE BOARD IF YOU REQUIRE ANY ACCOMMODATION TO MEET YOUR INDIVIDUAL NEEDS.

COMMISSION DES RELATIONS DE TRAVAIL DE L'ONTARIO
BULLETIN D'INFORMATION N° 25

Conflits de juridiction dans l'industrie de la construction

Le présent bulletin expose la procédure prescrite lorsqu'une partie dépose une requête sollicitant de la Commission qu'elle statue sur l'affectation d'un travail (conflit de juridiction) en vertu de l'article 99 de la *Loi de 1995 sur les relations de travail*. La Commission a établi pour ce type de requête des procédures spécifiques, assorties d'exigences réduites en matière de délais et de dépôt de documents. La Commission traite les conflits de juridiction par voie de consultation et non d'audience.

Il est important que les parties à un conflit de juridiction prennent connaissance des directives que renferment le présent bulletin et les Règles de procédure de la Commission et qu'elles veillent à s'y conformer. À défaut, la Commission peut refuser de traiter la requête ainsi que tout autre document.

QUI PEUT DÉPOSER UNE REQUÊTE?

Toute partie peut en tout temps déposer un Avis du dépôt d'une requête relative à un conflit de juridiction. Généralement, une partie dépose une Requête relative à un conflit de juridiction lorsqu'elle désire que la Commission détermine si un travail relevant d'une certaine unité de négociation a été affecté à des membres du syndicat approprié. Les circonstances suivantes donnent lieu à une requête de ce type :

1. un syndicat ou un conseil de syndicats ou le représentant de l'un ou de l'autre a exigé ou exige de l'employeur qu'il attribue un travail donné aux membres d'un syndicat plutôt qu'à ceux d'un autre;
2. un employeur a attribué ou attribue un travail donné aux membres d'un syndicat plutôt qu'à ceux d'un autre.

DÉPÔT DE L'AVIS

L'Avis du dépôt d'une requête relative à un conflit de juridiction identifie le requérant, les intimés et toute autre partie pouvant être touchée par la requête. L'avis donne la description du projet et du travail en litige et énumère les éléments qui ont permis au requérant de constater l'existence d'un conflit au sujet de l'affectation du travail. L'avis ne renferme pas les renseignements ni l'argumentation qui figureront plus tard dans le mémoire.

La Commission a mis au point un processus accéléré de règlement des conflits de juridiction. Si une partie souhaite recourir à ce processus accéléré, elle doit l'indiquer dans son avis ou sa réponse.

Le requérant fait remise d'une copie de son Avis du dépôt d'une requête relative à un conflit de juridiction, accompagnée d'un exemplaire en blanc de la réponse et d'une copie de l'avis, à chaque intimé et à chaque partie touchée avant le dépôt de son dossier auprès de la Commission.

Si le requérant est l'employeur, il doit satisfaire à certaines exigences de dépôt particulières, énoncées ci-dessous.

Le requérant qui sollicite un protocole de consultation suivant le processus accéléré en propose les dates dans la requête.

L'Avis du dépôt d'une requête relative à un conflit de juridiction est déposé auprès de la Commission dans les cinq (5) jours suivant sa remise aux autres parties.

Dans le cadre d'une Requête relative à un conflit de juridiction, ce n'est pas nécessairement le requérant qui dépose le premier mémoire.

CONFIRMATION DU DÉPÔT

Lorsque la Commission reçoit un Avis du dépôt d'une requête relative à un conflit de juridiction, elle envoie une Confirmation du dépôt aux intimés et aux parties touchées.

La Confirmation du dépôt annonce la désignation d'un agent des relations de travail et fixe les dates d'une conférence préparatoire à la consultation et de la consultation même.

La conférence préparatoire à la consultation a lieu quinze (15) jours après la date du dépôt de l'Avis du dépôt d'une requête relative à un conflit de juridiction.

Si un grief a été déposé en rapport avec le même conflit, la Commission suspend généralement son traitement jusqu'au règlement du conflit de juridiction.

RÉPONSE

La Réponse à un avis du dépôt d'une requête relative à un conflit de juridiction est déposée dans les cinq (5) jours suivant la date de la Confirmation du dépôt. La réponse identifie l'intimé ou l'intervenant et donne le nom de toute autre partie touchée dont le nom ne figure pas à l'avis.

La réponse décrit le projet et la nature du travail en litige, précise la date du conflit et formule la position de l'intimé quant à l'affectation appropriée du travail en litige.

L'intimé qui sollicite un protocole de consultation suivant le processus accéléré en propose les dates.

AVIS OU RÉPONSE DE L'EMPLOYEUR

L'employeur requérant ou intimé dépose, avec son avis ou sa réponse, des documents qui permettront aux parties ou à la Commission de rédiger la description du travail en litige. Ces documents peuvent être des plans, dessins, spécifications, croquis ou autres, qui exposent les grandes lignes du projet et du travail en litige. L'employeur peut ne déposer que les passages les plus pertinents de ces documents, mais il en apporte la version intégrale à la conférence préparatoire à la consultation.

Bien souvent, une Requête relative à un conflit de juridiction est déposée dans une situation où un grief contre l'employeur a également été déposé. Habituellement, la Commission refuse d'accorder des dommages-intérêts en guise de recours lors de tels griefs si elle juge que l'employeur a fait une affectation erronée du travail, sauf lorsqu'elle estime que l'affectation faite par l'employeur était déraisonnable dans les circonstances. Le défaut de déposer les documents nécessaires aux parties et à la Commission pour avoir une idée précise du travail en litige constitue généralement une preuve que l'affectation n'a pas été faite de manière raisonnable.

CONFÉRENCE PRÉPARATOIRE À LA CONSULTATION

La Commission convoque une conférence préparatoire à la consultation dans les quinze (15) jours suivant la réception d'un Avis du dépôt d'une requête relative à un conflit de juridiction. L'ordre du jour comprend trois articles. Tout d'abord, avec l'aide de la Commission, les parties rédigent la description du travail en litige, à défaut de quoi la Commission formule elle-même cette description; en deuxième lieu, la Commission tente d'effectuer une médiation; en troisième lieu, la Commission établit le protocole de dépôt des mémoires et fixe la date de la consultation.

Les parties sont tenues de se présenter à la conférence préparatoire à la consultation munies des documents nécessaires pour formuler les observations appropriées et accompagnées de personnes-ressources aptes à conclure des ententes exécutoires.

Travail en litige

Les parties s'efforcent, avec l'aide de la Commission, d'arriver à une description commune du travail en litige. Si les parties ne peuvent s'entendre, la Commission formule cette description aux fins du règlement du conflit. La Commission peut, à la demande d'une partie ou de sa propre initiative, exiger d'une partie qu'elle produise tout document pouvant être utile au processus.

Médiation

La Commission prend le temps nécessaire pour tenter de régler le conflit par la médiation.

Protocole

Les parties s'efforcent de s'entendre sur un protocole de procédures.

Le syndicat qui invoque une affectation incorrecte du travail dépose le premier mémoire.

En l'absence d'une entente ou à moins que la Commission n'en décide autrement, les délais sont les suivants :

a) dépôt du premier mémoire : au cours des six semaines précédant la conférence préparatoire à la consultation;

b) dépôt des mémoires des autres parties : au cours des six semaines suivant la réception du premier mémoire;

c) dépôt du mémoire de réponse : dans les trois semaines suivant la réception des mémoires de réponse.

La date de la consultation est confirmée au cours de la conférence.

Parfois, des parties, en particulier des parties qui résident à l'extérieur de Toronto, considèrent que l'utilité d'une conférence préparatoire à la consultation en personne a moins de poids que le temps, le coût et l'effort nécessaires pour se présenter devant la Commission. La Commission tient à rappeler aux parties qu'il peut être renoncé à la présence à une conférence préparatoire à la consultation si les parties se mettent d'accord par écrit à l'avance sur les questions qui seront examinées pendant la conférence, y compris la description précise de l'objet du litige et le calendrier de dépôt des mémoires. Toutefois, avant qu'une conférence préparatoire à la consultation ne soit annulée par la Commission, ces ententes doivent être examinés par un vice-président de la Commission qui vérifiera si elles sont claires et judicieuses et si elles décrivent efficacement les paramètres réels de l'objet du litige – non seulement pour la mise en place et le dépôt des mémoires pertinents, mais également pour la consultation.

PROTOCOLE – PROCESSUS ACCÉLÉRÉ

Dans certaines circonstances, la Commission peut, à la demande d'une partie et si elle l'estime opportun, fixer le protocole du processus accéléré. La partie qui sollicite ce type de processus doit fournir des raisons probantes à l'appui de sa demande, ainsi une entente des parties, ou encore, si le conflit de juridiction est quasi identique à un autre sur lequel la Commission a récemment statué, elle doit faire valoir ce fait. Le cas échéant, le protocole (en l'absence d'une entente de toutes les parties et une fois ordonné le protocole du processus accéléré) est le suivant :

a) toutes les parties déposent un mémoire dans les dix (10) jours civils suivants (à l'exclusion des jours fériés uniquement);

b) toutes les parties peuvent déposer un mémoire de réponse dans les quatre (4) jours civils suivants;

c) la date de la consultation est fixée au lendemain ou au surlendemain de la date fixée pour la remise des mémoires de réponse;

d) une décision « en abrégé » est rendue dans les 24 heures suivantes. La décision ne vaut que pour le litige en cause et n'entre pas en ligne de compte lors de tout autre conflit de juridiction soumis à la Commission.

DÉCISION

À la suite de la conférence préparatoire à la consultation, la Commission rend une décision renfermant la description du travail en litige, le protocole de dépôt des mémoires, toute entente des parties et tout ordre ou toute directive nécessaire au déroulement de la requête.

RÉUNION DE MÉDIATION

Le directeur des Services régionaux fixe la date d'une réunion avec un agent des relations de travail après la conférence préparatoire à la consultation.

Cette fois encore, les parties sont tenues de se présenter à la réunion munies des documents nécessaires et accompagnées de leurs personnes-ressources, dont un représentant ayant le pouvoir de régler le conflit.

MÉMOIRES

Il n'y a aucune exigence particulière concernant la présentation du mémoire. Cependant, les parties doivent y joindre une copie de tous les documents qui leur serviront d'appui lors de la consultation.

La partie du mémoire consacrée à l'argumentation ne doit pas dépasser dix (10) pages sur papier 8,5 po x 11 po, à double interligne, pas d'impression 12.

Ces dernières années, la Commission a considéré un certain nombre de facteurs lors du traitement d'un conflit de juridiction, notamment : pratique chez l'employeur, pratique dans la région, mesures d'économie et efficience. Veillez à joindre à votre mémoire toutes les observations et tous les documents relatifs aux facteurs qui vous semblent pertinents. Ne présentez que les observations et documents se rapportant aux facteurs que vous trouvez pertinents pour le litige en cause. Par exemple, la pratique dans la région et la pratique chez l'employeur sont souvent des facteurs pertinents importants lors d'un conflit de juridiction, contrairement aux actes constitutifs d'un syndicat. Ne joignez à votre mémoire que les observations et documents relatifs aux facteurs qui, à votre avis, démontrent clairement que le travail devrait être attribué à un syndicat plutôt qu'à un autre. Si vous pensez qu'un facteur ne démontre rien en particulier, n'en faites pas mention dans vos observations.

Si, selon un intimé, le requérant n'a pas fait valoir un facteur qui a une importance réelle pour le dossier, cette partie doit énoncer dans ses observations les raisons pour lesquelles ce facteur milite en faveur d'un syndicat plutôt que d'un autre. L'intimé doit mesurer la valeur *respective* des atouts et des lacunes des syndicats en présence sous cet aspect. Ainsi, il est inutile de produire une déclaration générale affirmant que les membres d'un syndicat possèdent la formation et les compétences nécessaires pour l'exécution du travail, mais qui omet d'exposer *les raisons pour lesquelles* les membres de l'autre syndicat ne présentent pas lesdites formation et compétences. Il est probable que l'intimé n'aura pas l'occasion de répondre à la réponse du requérant à ce sujet.

Si un intimé soulève une nouvelle question, le requérant répond à cette question dans son mémoire de réponse. On ne tient pas compte des nouvelles questions soulevées pour la première fois dans un mémoire de réponse.

Aucune conclusion ne doit être tirée du fait que le requérant ne traite pas d'un facteur abordé dans un mémoire que dépose un intimé. Les parties s'abstiennent de déposer des documents superflus.

CONSULTATION ET DÉCISION

La date de la consultation est confirmée lors de la conférence préparatoire à la consultation, à moins qu'une nouvelle date n'ait été prévue.

La consultation dure une journée. Au début de la consultation, la Commission fixe la période allouée aux observations de chaque partie, de façon à conclure la consultation à la fin de la journée.

Si la Commission est en mesure de rendre une décision en abrégé avant d'en communiquer la version intégrale, elle y procède dans les meilleurs délais.

Les audiences de la Commission sont ouvertes au public, sauf si, selon le comité, des questions de sécurité publique sont en jeu ou s'il peut être préjudiciable pour l'une ou l'autre partie de débattre en public de questions personnelles, d'ordre financier et autre. L'audience n'est pas enregistrée et ne donne pas lieu à une transcription des échanges.

La Commission émet des décisions écrites, où peuvent figurer le nom des personnes participant à une audience ainsi que des renseignements personnels les concernant. Le public peut avoir accès au contenu des décisions à partir d'une variété de sources, dont la Bibliothèque des tribunaux de travail de l'Ontario, et sur l'Internet à www.canlii.org, banque de données gratuite renfermant des renseignements d'ordre juridique. On peut trouver l'essentiel de certaines décisions sur le site Web de la Commission sous *En relief* et *Décisions récentes à signaler* à www.olrb.gov.on.ca.

REMARQUES IMPORTANTES

CONFORMÉMENT À LA *LOI DE 2005 SUR L'ACCESSIBILITÉ POUR LES PERSONNES HANDICAPÉES DE L'ONTARIO*, LA COMMISSION S'EFFORCE DE S'ASSURER QUE SES SERVICES SONT OFFERTS D'UNE MANIÈRE QUI RESPECTE LA DIGNITÉ ET L'INDÉPENDANCE DES PERSONNES HANDICAPÉES. VEUILLEZ INDIQUER À LA COMMISSION SI VOUS AVEZ BESOIN DE MESURE D'ADAPTATION POUR RÉPONDRE À VOS BESOINS PARTICULIERS.